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No. 390.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

Office Supreme Court U. S.
FEB 25 1901
JAMES H. McKENNEY,
Clerk.

Filed Feb. 25, 1901.

WILLIAM B. DINSMORE and C. GRAY DINSMORE, and WILLIAM B. DINSMORE, C. GRAY DINSMORE and DUMOMD CLARK, as Executors and Trustees under the Will of WILLIAM B. DINSMORE, Deceased, Appellants,

vs.

THE SOUTHERN EXPRESS COMPANY; L. N. TRAMMELL, THOMAS C. CRENSHAW, Jr., and SPENCER R. ATKINSON, Composing the Railroad Commission of the State of Georgia, *et al.*, Appellees.

Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, and Return.

SUPPLEMENTAL BRIEF FOR THE RAILROAD COMMISSION OF GEORGIA.

J. M. TERRELL, OF COUNSEL FOR THE RAILROAD COMMISSION OF GEORGIA.

ATLANTA, GA.
The Franklin Printing and Pub. Co.
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SUPPLEMENTAL BRIEF OF J. M. TERRELL, OF COUNSEL FOR THE RAILROAD COMMISSION OF GEORGIA.

I.

The Railroad Commission does not seek by its order to deny to the Southern Express Company the right to contract, which it enjoys under the law. No express company has the right to contract for the carriage of goods at a higher rate than the maximum rate fixed by the Commis-

sion, when that rate does not contravene the requirements of the Constitution. The allegations in the bill show that a considerable number of shipments are made by the Company for a price below the maximum prescribed rate, as to all such shipments the Company may contract with the shippers as to the payment of revenue stamp without violating the law or the order of the Commission. This view is in perfect harmony with the case cited by Mr. Miller in 110 Ga. 687.

II.

It was proper practice for the Circuit Court of Appeals to order the bill dismissed. The bill appeared to the court to be devoid of equity, therefore the court was authorized to grant an order directing the bill to be dismissed. See 177 U. S. 485-495. The Court of Appeals for the Fourth Circuit in 87 Fed. Rep. 457, remanded the cause to the court below with instructions to dismiss the bill. The case was then brought to this Court, where it was contended that the appellate court should have permitted further proofs, and this Court in 178 U. S., 168-183, affirmed the judgment of the Court of Appeals and cited approvingly the case in 177 U. S. 495.

Respectfully submitted,

J. M. TERRELL,

Attorney for the Railroad Commission of Georgia.

Atlanta, Ga.